

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GELASIO ALASA-AS, DEFENDANT AND APPELLANT.

G.R. No. 16043. March 12, 1920

Ponente: TORRES, J.

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TORRES, J.:

Upon an information filed by the provincial fiscal in the Court of First Instance of Oriental Negros on the 21st day of June, 1919, accusing Gelasio Alasa-as of the crime of robbery with homicide, this cause was heard and judgment rendered thereon on the 24th day of October, 1919, condemning the accused to undergo fourteen years, eight months and one day of reclusion temporal and the accessory penalties of article 55 of the Penal Code, to pay to the family of the deceased as indemnity the sum of P500, and to pay the costs, with the deduction of one-half of the time suffered during the preventive imprisonment. From this judgment counsel for the accused appealed.

At noon of the 1st of July of last year, 1919, while Gabriel Bation was on his banana plantation, he was attacked by Gelasio Alasa-as with a bolo, inflicting upon him four wounds in the back and in the rear part of the neck, which wounds penetrated the fourth cervical vertebra. And as a result of these very serious and mortal wounds, the person assaulted died several hours afterwards. The motive of the aggression does not appear on record, nor does it appear whether before said aggression there had been any quarrel or dispute between the aggressor and his victim.

The nephew of the deceased, Valentin Sumalpong, a old boy, testified that on the morning in question, he was near the place of the incident busy with laying traps for snakes, when he raised up his eyes he saw 6 accused with his bolo attacking the deceased; that the accused gave the deceased a blow in the right side of th neck; that the accused was about 50 or 60 brazas from th place where he (the witness) was; that when the decease Gabriel Bation attempted to run towards his nearby dwelling, he fell upon a stone, whereupon the accused Alasa-as again gave the deceased three more blows with his bolo and ran away, carrying with him a sack for rice; and that he saw the foregoing incident from the place where he was because this place was elevated and the place where the deceased was assaulted by the accused was unobstructed.

Marcos Sumalpong, another nephew of the deceased, who was over 25 years old, testified that at about 10 o'clock on the morning in question, he saw the accused pass near the land on which he was working and later he saw the accused going towards the banana plantation of the deceased; that shortly afterwards the witness heard a noise produced by some persons of which he did not stop to pay careful attention because there was a hillock between the place where he was and that from which said noise was proceeding; that, when he saw the accused pass by him, said accused was wearing the camisa presented on the trial as Exhibit B and was carrying under one of his arms an empty sack and a bolo the sheath of which was presented as Exhibit C; and that it was at the second time he saw the accused going towards the banana plantation of the deceased, when he heard the noise aforementioned and thenceforth he did not see the accused.

The accused pleaded not guilty, denied having assaulted Gabriel Bation, affirmed that he did not know the latter

nor the two witnesses who testified on the trial and that he did not pass by the place where Marcos Sumalpong was going towards the land of the deceased, and alleged that at about 8 a. m. of July 1, 1919, he went to the place called Naghonoghonog, passing by the sitio of Cangisag and from this place he returned to his residence where he was working on his land without leaving therefrom and that ignores whether or not the witnesses who testified on the trial had any motive to cause him damage.

From the foregoing facts the inference is that at noon of the 1st of July aforesaid, Gabriel Bation, being on his plantation, received several serious wounds from the accused and, as a consequence of the same, died several hours afterwards. This fact constitutes the crime of homicide comprised in article 404 of the Penal Code. It does not appear in the cause that the commission of this crime is attended by any qualifying circumstance determinative of a higher classification and more severe penalty, or that said crime was perpetrated in consequence or on the occasion of the robbery of any property of the deceased; for from the proceeding it was not sufficiently proven that the accused had taken any of the fruits of the bananas planted by the deceased at the place of the Occurrence, it not being enough to infer said robbery from mere suspicion and presumption that the opposition that might have been offered by the deceased to the robbery of the banana fruits which the accused might have taken were the motive why the latter would have assaulted the owner of the fruits inflicting upon him serious wounds which caused his death.

It appears as proven that the accused assaulted with his bolo, and afterwards pursued, the deceased, when the latter ran away, inflicting upon him several wounds from which he fell prostrate on the ground before he could reach his house. Such is the testimony of the eyewitness Valentin Sumalpong. And although the latter is a relative of the deceased and is a ten-year old boy, nevertheless his incriminatory testimony against the accused is, in all its parts, corroborated by the act of the deceased having been found mortally wounded, and on the point of dying, on the spot where he was seen attacked and pursued by the accused, notwithstanding the latter's insistent denial and alleged alibi, alibi which is denied of any real justification and absolutely rebutted by the same witness Valentin Sumalpong, who witnessed the aggression, and by another witness of age, who, despite the fact that he did not witness the perpetration of the crime, affirms having seen the accused pass near the place where he was working, going towards the banana plantation of the deceased. Wherefore, it is not true that the accused was in a place far from the place of the crime. The truth is that the accused had been at the hour and on the date of the crime in the place where he killed the unhappy Gabriel Bation, as the principal witness Valentin Sumalpong asserts.

It therefore appears proven that the accused was the author by direct participation, beyond reasonable doubt, of Gabriel Bation's death according to the merits and circumstantial evidence offered by the cause, it not being an obstacle to this conclusion the circumstance of not having found the motive which impelled the accused to inflict several serious wounds upon the deceased Gabriel Bation, which wounds caused the latter's death. Wherefore, considering that only the crime of simple homicide had been perpetrated in this case without the attendance of any aggravating circumstance and accepting the finding of the trial judge that the present case is attended by the special mitigating circumstance mentioned in article 11 of the Penal Code as amended, the penalty provided for by law for the crime of homicide should be imposed upon the accused in its minimum degree, as was done by the trial judge in the judgment appealed from, which judgment is in accordance with the law and the merits of the case.

For the foregoing reasons whereby the errors attributed to said judgment have been refuted, same must be affirmed as we do hereby affirm it, with the costs against the defendant-appellant, provided, however, that the one day reclusion imposed therein is omitted and the indemnity to the heirs of the deceased is increased to P1,000.

Arellano, C. J., Johnson, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

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